



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1721 OF 2012

KRISHAN

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

O R D E R

The appellant before this Court has been convicted under Section 302 IPC and Section 25 (1A) of the Arms Act, 1959 and has been sentenced to life imprisonment and 5 years of rigorous imprisonment by the Trial Court. The three other accused with him though, were acquitted by the Trial Court. The conviction and sentence of the appellant has been upheld by the High Court.

The brief facts of the case are as follows:

FIR No. 269/2005 dated 28.10.2005 registered at Police Station- Civil Lines Sonapat was lodged by PW-1/father (Shri Hans Raj) of the deceased. The deceased was the son of the complainant/father (PW-1) and mother (Smt. Premjit) PW-2 resident of Village Jahri.

The incident occurred between 8.30 P.M. and 9.00 P.M. on 28th October, 2005. There was a knock at the door and the deceased-Charanjit alias Channi went to answer the call. As per the

informant, there were four persons and one of them fired point blank at the deceased Charanjit resulting in his instant death.

He was taken to the General Hospital, Sonapat where he was declared dead. Three accused namely, Raju, Ram and Pawan were arrested on 03rd November, 2005, whereas the present appellant was arrested on 4th November, 2005. As per the prosecution case after the accused/appellant was arrested, he made the statement before the Investigating Officer and was taken to a place near Satsang Bhawan at Sonapat and the weapon of crime was recovered outside the Satsang Bhawan in a pile of garbage. The weapon of the crime, recovered at the instance of the appellant was marked as exhibit PI/2 and moreover was sent for forensic examination.

After the investigation, the police filed its charge sheet under Section 120B and Section 302 read with 34/120 IPC against the accused. Besides this, the present appellant was also charge sheeted under Section 25 (1A) of the Arms Act. After which, the present appellant and the other three accused faced trial in which the three accused namely, Raju, Ram and Pawan were acquitted whereas the appellant was convicted under Section 302 IPC and Section 25 (1A) of the Arms Act and was sentenced to life imprisonment and 5 years of rigorous imprisonment, as stated above.

Before the Trial Court, thirteen prosecution witnesses were examined, apart from the report of forensic examination and other exhibits in order to establish the crime of the accused. The two eye-witnesses PW-1 and PW-2 who are the father and mother of the deceased respectively have given the statement as to how they saw the commission of the crime. But considering the innumerable

contradictions in their statements, the Trial Court as well as the Appellate Court have both disbelieved these two witnesses. Yet, the trial has come to the conclusion that although the statements of these two witnesses cannot be believed yet the prosecution has been able to prove its case beyond a reasonable doubt, on the basis of circumstantial evidence. There are two circumstantial evidence placed by the prosecution before the Trial Court. First is the recovery of the weapon and the second is the forensic report. Let us examine the forensic report first. The weapon which was recovered on the disclosure statement of the accused is the country made pistol which has a bore of .315 caliber. As already stated above, this exhibit was sent for forensic examination.

It has also come in the report that a bullet was recovered from the left chest and there is a lacerated wound of the bullet on the right chest of the deceased where blackening is also present which confirms the story of the prosecution that firing was made from a point-blank range. The forensic report states that the bullet which has been recovered from the body of the deceased perfectly matches the gun which was recovered on the pointing out of the appellant on 04th November, 2005. The result is as follows :

1. The Countrymade pistol marked W/1 (chambered for .315" cartridges) is a firearm as defined in the Arms Act (54 of 1959). Its firing mechanism was found in working order.

2. .315" fired bullet marked BC/1 has been fired from Countrymade pistol W/1 (chambered for .315" cartridges) and not from any other firearm even of the same make and

bore/calibre, because every firearm has got its own individual characteristic marks."

The forensic examination report undoubtedly establishes that the bullet which was recovered from the body of the deceased matches the gun which was recovered on the pointing out of the appellant. On this there should not be any doubt. The only question is now of the recovery itself. If the recovery is a genuine recovery and inspires the confidence of the Court by and large we can say that the guilt of the accused stands established and the chain would be complete. The recovery, however, does not inspire our confidence for two reasons. First, the recovery itself is after more than seven days from a garbage in an open space which is accessible to the general public which has been recorded in the statement of the recovery witness PW-10 constable H.C. Naresh Kumar himself. Moreover, out of the two witnesses to the recovery, (A) PW-10-constable and (B) the independent witness Rajinder, only the PW-10 was examined as a witness and the independent witness in fact, was never examined in the Court. This makes the recovery extremely doubtful. The result therefore would be that although the fatal shot was indeed fired from the gun yet it has still not been established whether the gun was fired by the appellant and none other. We say this for the reason that the recovery of the weapon on the alleged disclosure of the appellant does not inspire our confidence. For this reason, we do not find that the chain of evidence stands completed.

The benefit of the doubt goes to the accused. In our

considered opinion, the appellant/accused has been successful in creating a doubt to the entire theory of the prosecution which rests on circumstantial evidence alone. The evidence of PW-1 and PW-2, so called eye-witness have been disbelieved, and in our view rightly so. In case of a circumstantial evidence, the chain must be completed and ultimately the finding which has to be arrived at by the Court should be that it is only the accused and none other than the accused who has committed such a crime. We are afraid that the prosecution has not been able to establish this. Consequently, we are of the opinion that the appellant needs to be acquitted, as there is a benefit of doubt which lies in his favour.

The appeal therefore succeeds. The appellant is liable to be acquitted and is hereby acquitted. The impugned order dated 10.03.2011 is set aside. We are informed that the appellant has already been in jail for the last eighteen years. He shall now be released from the jail forthwith unless his presence is required in any other case.

.....J.
[SUDHANSHU DHULIA]

.....J.
[PRASANNA B. VARALE]

NEW DELHI;
FEBRUARY 28, 2024

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No. 1721/2012

KRISHAN

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

Date : 28-02-2024 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSHU DHULIA

HON'BLE MR. JUSTICE PRASANNA BHALACHANDRA VARALE

For Appellant(s) Ms. Srishti Mishra, Adv.
Mr. R. C. Kohli, AOR

For Respondent(s) Mr. Devender Kumar Saini, Adv.
Dr. Monika Gusain, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of signed order.

The appellant shall be released from the jail forthwith
unless his presence is required in any other case.

Pending application(s) shall stand disposed of.

(RAJNI MUKHI)
COURT MASTER (SH)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)

(Signed order is placed on the file)